# XXX (a minor suing through the mother and next friend Che Rohayu bt Abd Rahim) & Anor v Muhammad Risya Rizuan bin Mat Aripin

HIGH COURT (KOTA BHARU) — ORIGINATING SUMMONS NO DA-24NCvC-344–09/2022
MOHAMAD ABAZAFREE J
30 AUGUST 2023

*Civil Procedure — Jurisdiction — High Court — Determination of biological father of child — Application for declaratory order that first applicant was biological son of respondent — Whether court had jurisdiction to entertain applicants' application*

*Evidence — Proof of — Paternity — Determination of biological father of child — Application for declaratory order that first applicant was biological son of respondent — Whether it was proved that respondent was biological father to first applicant*

This was an application by the applicant for a declaratory order that the first applicant was the biological son of the respondent. The second applicant contended that she and the respondent had an extramarital affair. As a result of the affair, the second applicant was pregnant and gave birth to the first applicant. Upon being persuaded, the respondent did a paternity test through his blood specimen and the second applicant's blood. The DNA report showed that the respondent was the biological father of the first applicant with 99.9994% probability of paternity. Nevertheless, the respondent was reluctant to admit the report and the status of the paternity report. Hence, this application by the applicant. The issues for determination were: (a) whether this court had jurisdiction to entertain the applicants' application; and (b) whether it was proved that the respondent was the biological father to the first applicant.

**Held**, allowing encl 1 with no order as to cost:

(1) The relief sought by the applicants was not about the legitimacy but for the court to determine the paternity of the first applicant. The issue of paternity was an issue of facts which was different from legitimacy. It was not within the exclusive jurisdiction of the Syariah Court. The applicants had all rights to file the application in the court and the court had all the jurisdiction to adjudicate the matter (see paras 18 & 22).

(2) The only contest of the respondent to the DNA report was to the legality of the sample taken. There was no serious attack on the DNA report specifically to the expertise of expert witnesses and the techniques carried out by said experts. In other words, there was no serious dispute to the facts. The respondent failed to seriously contest or deny the DNA report adduced by the applicants. There were no reasons why the court should convert this action to a writ action (see paras 24, 26 & 28).

(3) Both the first applicant and the respondent had their blood been taken and subjected to the DNA test. There was no evidence of any force used and once he had given his consent, the respondent was deemed to accept any opinion given by the expert unless if he could show any legal and evidential error. On this premise, the DNA report was a conclusive proof of the paternity of the respondent on the first applicant (see paras 29, 30 & 34).

**[Bahasa Malaysia summary**

Ini adalah permohonan oleh pemohon untuk perintah pengisytiharan bahawa pemohon pertama adalah anak kandung responden. Pemohon kedua menegaskan bahawa dia dan responden mempunyai hubungan luar nikah. Akibat hubungan sulit itu, pemohon kedua mengandung dan melahirkan pemohon pertama. Setelah dipujuk, responden melakukan ujian paterniti melalui spesimen darahnya dan darah pemohon kedua. Laporan DNA menunjukkan bahawa responden adalah bapa kandung kepada pemohon pertama dengan 99.9994% kebarangkalian paterniti. Namun begitu, responden enggan mengakui laporan dan status laporan paterniti. Oleh itu, permohonan ini oleh pemohon. Isu-isu untuk penentuan adalah: (a) sama ada mahkamah ini mempunyai bidang kuasa untuk mendengar permohonan pemohon; dan (b) sama ada terbukti bahawa responden adalah bapa kandung kepada pemohon pertama.

**Diputuskan**, membenarkan lampiran 1 tanpa perintah kos:

(1) Relif yang dipohon oleh pemohon bukanlah mengenai kesahan tetapi untuk mahkamah menentukan paterniti pemohon pertama. Isu paterniti adalah isu fakta yang berbeza daripada kesahan. Ia bukan dalam bidang kuasa eksklusif Mahkamah Syariah. Pemohon mempunyai semua hak untuk memfailkan permohonan di mahkamah dan mahkamah mempunyai semua bidang kuasa untuk mengadili perkara itu (lihat perenggan 18 & 22).

(2) Satu-satunya pertikaian responden terhadap laporan DNA adalah mengenai kesahihan sampel yang diambil. Tiada serangan serius terhadap laporan DNA itu khusus kepada kepakaran saksi pakar dan teknik yang dijalankan oleh pakar tersebut. Dalam erti kata lain, tiada pertikaian serius terhadap fakta. Responden gagal mempertikaikan atau

menafikan secara serius laporan DNA yang dikemukakan oleh pemohon. Tiada sebab mengapa mahkamah perlu menukar tindakan ini kepada tindakan writ (lihat perenggan 24, 26 & 28).

(3) Kedua-dua pemohon pertama dan responden telah diambil darah mereka dan tertakluk kepada ujian DNA. Tiada keterangan sebarang kekerasan digunakan dan sebaik sahaja dia memberikan persetujuannya, responden dianggap menerima apa-apa pendapat yang diberikan oleh pakar melainkan jika dia boleh menunjukkan sebarang kesilapan undang-undang dan keterangan. Atas premis ini, laporan DNA adalah keterangan muktamad tentang paterniti responden kepada pemohon pertama (lihat perenggan 29, 30 & 34).]

**Cases referred to**

*CAS v MPPL & Anor* [2019] 4 MLJ 243, CA (refd)
*CTEB & Anor v Ketua Pengarah Pendaftaran Negara Malaysia & Ors* [2021] 4 MLJ 236, FC (refd)
*Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145, FC (refd)
*Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757; [2014] 4 CLJ 253, FC (refd)
*Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 (refd)
*Kuruma, Son of Kaniu v R* [1955] AC 197, PC (refd)
*Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 1 MLJ 398, FC (refd)
*Regina v Sang* [1980] AC 402, CA (refd)
*Shyamala a/p M Shanmuganathan lwn Ko Boon Leong dan satu lagi* [2022] MLJU 714; [2022] 1 LNS 350, HC (refd)
*Siti Hasnah Vangarama Abdullah v Tun Mahathir Mohamad (as the President of PERKIM) & ors* [2012] 7 CLJ 845, CA (refd)
*YKK (M) Sdn Bhd v Pengarah Tanah dan Galian Johor* [2021] 6 MLJ 496; [2021] 8 CLJ 179, FC (refd)

**Legislation referred to**

Enakmen Pentadbiran Mahkamah Syariah Kelantan No 3/1982 s 9(2)
Federal Constitution art 121(1A), Ninth Schedule, List II
Rules of Court 2012 O 5 r 3, O 92 r 4
Specific Relief Act 1950 ss 40, 41, 42

*Adly Zulfadhly bin Zulkefly (Salina Fazilawati & Co) for the applicant.*
*Wan Shazlina bt Wan Hanafi (Abqary Aziz & Co) for the respondent.*

**Mohamad Abazafree J:**

INTRODUCTION

**[1]** This is an application by the applicant under O 92 r 4 of the Rules of Court 2012 ('the ROC 2012') and under s 42 of the Specific Relief Act 1950 ('the SRA') for a declaratory order that the first applicant is the biological son of Muhammad Risya Rizuan bin Mat Aripin based on the certificate of analysis Lab No DM220305676 dated 1 April 2022 from DNA Laboratories Sdn Bhd.

**[2]** The first applicant is a child and for the purpose of this application is acting by his mother who is the second applicant.

THE SALIENT FACTS

**[3]** The second applicant in her affidavit contended that she and the respondent had an extramarital affair on 12 November 2020. As result of the affair, the second applicant became pregnant and gave birth to the first applicant.

**[4]** Upon being persuaded, the respondent did a paternity test through his blood specimen and the second applicant's blood. The DNA report dated 1 April 2022 with Analyst Lab No DM220305676 exhibited as CR3 of E4 shows that the respondent is the biological father of first applicant with 99.9994% probability of paternity.

**[5]** Nevertheless, the respondent was reluctant to admit the report and the status of the paternity report. Hence this application is made.

ISSUES TO BE TRIED

**[6]** Based on the submission filed by both parties, there are two issues ventilated by both parties to be determined by this court. The issues are as follows:

(a) whether this court has jurisdiction to entertain the applicants' application; and

(b) whether it is proved that respondent is the biological father to the first applicant

ANALYSIS AND FINDINGS OF THIS COURT

*Issue (a): Whether this court has jurisdiction to entertain the applicants' application*

**[7]** The respondent's counsel argued that both applicants and respondent are Muslim and as such, issues relating to biological father and legitimacy are not within the jurisdiction of this court. Though s 40 of the Specific Relief Act 1950 is a general provision relating the power of this court to made a declaratory order of any legal character, yet, since all parties are Muslim, the only court who has such power is the Syariah Court.

**[8]** The learned counsel brought the attention of this court to s 9(2) of the Enakmen Pentadbiran Mahkamah Syariah Kelantan No 3/1982 ('the said Enactment') which provides as follows:

> (2) Dalam bidangkuasa sivilnya, mendengar dan memutuskan segala tindakan dan perbicaraan dalam mana pihak-pihak berkenaan semuanya berugama Islam dan yang berkenaan dengan:
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> (i) pertunangan, perkahwinan (termasuk taat balik) perceraian, khuluk, fasakh, cerai taliq, menentukan giliran, lian, ila, atau mana-mana perkara yang berkaitan dengan perhubungan suami isteri;
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> (ii) mana-mana pembahagian atau tuntutan kepada mana-mana harta yang terbit dari mana-mana perkara yang tersebut dalam perenggan-kecil (i) seksyen ini;
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> (iii) nafkah orang-orang tanggungannya, pengesahan taraf kanak-kanak, penjagaan atau pemeliharaan kanak kanak;
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> (iv) pembahagian atau tuntutan kepada harta sepencarian atau dom;
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> (v) menentukan nasab atau faraidh orang-orang yang berhak mendapat bahagian pesaka;
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> (vi) alang hayat (hibah) atau membatalkannya;
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> (vii) wasiat atau wakaf atau nazar; atau
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> (viii) lain-lain perkara yang mana bidangkuasanya telah ditetapkan oleh mana-mana undang-undang bertulis:
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> Dengan syarat bahawa Mahkamah itu lazimnya, tidaklah membicarakan mana-mana kesalahan atau mendengar atau menentukan mana-mana tindakan atau pembicaraan mengenai mana-mana Mahkamah Qadhi Khas atau Qadhi Jajahan yang mempunyai bidangkuasa tersebut.

**[9]** Learned counsel argued that it is clear that the issue of legitimacy and lineage (*nasab*) of a child to be within the exclusive jurisdiction of the Syariah Court. Further it was argued that by virtue of art 121(1A) of the Federal Constitution, the jurisdiction of the Syariah Court and the civil High Court are separated.

**[10]** It is beyond doubt that this court is clouded with power to grant a declaration order. Section 41 of the Specific Relief Act 1950 codified this court

with the statutory jurisdiction to do so (see Federal Court in *YKK (M) Sdn Bhd v Pengarah Tanah dan Galian Johor* [2021] 6 MLJ 496; [2021] 8 CLJ 179).

**[11]** In what manner the declaratory order should be issue was expounded by Abdul Hamid Omar CJM (as he then was) in the case of *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64 as follows:

> Whether declaration should issue
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> The plaintiff has by his originating summons sought a declaration. It is fundamental principle that declaration will not be made if the application for it is embarrassing or the declarations can serve no useful purpose: see *Mellstrom v Garner & Ors* [1970] 2 All ER 9.
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> The learned Attorney-General has referred to a textbook on *Declaratory Orders*, 2nd Ed, by PW Young, on the conditions for declaratory orders and has submitted that one of the conditions to be satisfied is that (a) there must exist a controversy between the parties; (b) the proceedings must involve a 'right'; (c) the proceedings must be brought by a person who has a proper or tangible interest in obtaining the order; (d) the controversy must be subject to the court's jurisdiction; and (e) it must not be merely of academic interest, hypothetical or one whose resolution would be of no practical utility. The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought (*The Russian Commercial & Industrial Bank v British Bank for Foreign Trade* [1921] 2 AC 438 at 448 per Lord Dunedin).
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> At this juncture, I would refer to *Cox v Green* [1966] 1 Ch 216 where it was held:
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> > That on its true construction, RSC, O 15 r 17 (O 15 r 16 of our Rules of Court 2012), was limited to an action or proceeding in which the grant of the declaration sought would not be contrary to the accepted principles on which the court exercised its jurisdiction, one of those principles being that the court would not make a declaration in a dispute which was not a justiciable dispute.
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> I would also refer to the case of *Lim Cho Hock v Government of the State of Perak Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 2 MLJ 148; [1980] 1 LNS 43 where the court held that:
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> > The court's power to make declaratory judgments is confined to matters justiciable in the courts, and the binding declarations which it could make under O 15 r 16 of the Rules of the High Court, 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters (see also s 41 Specific Relief Act, 1950). Strictly, it is a discretionary relief and the discretion is to be exercised judicially consistent with accepted principles. In the exercise of its discretion, the court shall have regard to the facts and circumstances of each particular case before it decides to grant a declaration.

**[12]** It is pertinent in order to adjudicate the objection of the counsel, to analyse the relief sought by the applicants. This on the premise that this court and the Syariah Court have exclusive jurisdiction. If the matter falls within the exclusive jurisdiction of the Syariah Court, by virtue of art 121(1A) of the Federal Constitution, the matter shall fall outside the jurisdiction of this court.

**[13]** In *Siti Hasnah Vangarama Abdullah v Tun Mahathir Mohamad (as the President of PERKIM) & ors* [2012] 7 CLJ 845, Hishamudin Yunus COAJ held as follows:

> [15] In our view, the correct position in law is that only if the subject-matter of the action is exclusively within the jurisdiction of the Syariah Courts would the subject-matter, by virtue of art 121(1A) of the Federal Constitution, fall outside the jurisdiction of the civil courts.
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> [16] Therefore, the pertinent question that needs to be asked is: is the subject matter of the originating summons action exclusively within the jurisdiction of the Penang Syariah High Court?

**[14]** While the Federal Court in *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757; [2014] 4 CLJ 253 encountered the similar issue and Ariffin Zakaria Chief Juctice explained as follows:

> [15] The first question posed to us is whether the civil or the Syariah Court has the jurisdiction to determine whether a person professes Islam or not.
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> [16] The answer to the above question is governed by the provision of art 121(1A) of the Federal Constitution. For convenience, we set out below the said provision:
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> 121 Judicial power of the Federation
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> (1) there shall be two High Courts of co-ordinate jurisdiction and status, namely:
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> (a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and
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> (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;
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> (c) (Repealed),
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> and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.
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> (1A) The court referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Court.

A [17] From the above provision, it is clear that the civil court shall have no jurisdiction on any matter falling within the jurisdiction of the Syariah Court. The next question is, what then are the matters that fall within the jurisdiction of the Syariah Court? This is to be found in the provision of art 74 of the Federal Constitution, and the relevant part reads as follows:

B

> 74 Subject matter of federal and state laws.
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> (1) without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).

C

> (2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

D [18] Among the matters falling within the State List in the Ninth Schedule are Islamic law, personal and family law of person professing the religion of Islam.

**[15]** In *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145, the Federal Court E has affirmed the jurisdiction of the Syariah Courts to determine matters of dispute must be clearly provided for by state legislation. The state must ensure matters that are included in the jurisdiction of the Syariah Courts by clearly allocating it in its legislation. If otherwise, the Syariah Courts are exempted F from ruling on matters that are summarized in item 1 of List II (State List) in the Ninth Schedule of the Federal Constitution. Through the judgment of Zainun Ali FCJ, it has been clarified as follows:

> [55] The jurisdiction of Syariah courts must be provided for by the State Legislature within the limits of item 1; the courts do not have automatic jurisdiction over all the G matters mentioned (see Latifah [43]), in that its jurisdiction must be expressly conferred by state legislations. In other words, the state must claim ownership over the subject matters that fall within the jurisdiction of the Syariah Courts by providing for it expressly in its legislation; because otherwise, the Syariah Courts could be excluded from deciding on a subject matter which falls within item 1 of H List II (State List) in the Ninth Schedule to the Federal Constitution. This is an important point which in the past had affected the full effect of the Syariah Court's power when there is no express and clear provision enacted in the State Enactment. A case in point is *Soon Singh Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 2 CLJ 5. In that case, the Federal Court held that in the absence of any express provision (in the then Kedah I Administration of Muslim Law Enactment 1962 conferring jurisdiction on the Syariah Court to decide on questions of apostasy), the Syariah court has jurisdiction by implication; the court held that this is to be inferred from the language of the relevant provisions of the State Enactments with regard to the conversion of Islam.
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> [56] Speaking through Mohd Dzaiddin FCJ (as he then was) in *Soon Singh*, His

Lordship said at (p 501 (MLJ); p 21 (CLJ)):

> From the analysis of the State Enactments, it is clear that all State Enactments and the Federal Territories Act contain express provisions vesting the Syariah Courts with jurisdiction to deal with conversion to Islam. On the other hand, only some State Enactments expressly confer jurisdiction on the syariah courts to deal with conversion out of Islam. In this regard, we share the view of Hashim Yeop A Sani CJ (Malaya) in Dalip Kaur p 7 that 'clear provisions should be incorporated in all State Enactments to avoid difficulties of interpretation by the civil courts,' particularly in view of the new cl. (1A) of art 121 of the Constitution which as from 10 June 1988 had taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the syariah courts. Be that as it may, in our opinion, the jurisdiction of the syariah courts to deal with the conversion out of Islam, although not expressly provided in the State Enactments, can be read into them by implication derived from the provisions concerning conversion into Islam.
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> [57] The above view was approved in *Latifah Mat Zin*. The jurisdiction of the Syariah Courts to determine a subject matter of a dispute must be expressly conferred by the State legislation.

**[16]** It is beyond doubt that the issue of legitimacy of a Muslim is within the ambit of the Syariah Court. This as promulgated by List II (State List) in the Ninth Schedule of the Federal Constitution which provides as follows:

> 1 Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom.

**[17]** By virtue of this provision the said Enactment provides a clear jurisdiction of the Syariah Court in legitimacy and lineage of a Muslim child. As such, if the relief sought is in matter relating to legitimacy, then this court is want of jurisdiction and as such this application shall be dismissed forthwith.

**[18]** Nevertheless, the relief sought by the applicants is not about the legitimacy but the for this court to determine the paternity of the first applicant. Both words might be interrelated as legitimacy often closed to paternity but both has different meaning. Legitimacy refers to the legal status of a child who is born to parents who are married to each other at the time of the child's birth. Legitimate child has certain legal right and privileges, such as the right to inherit from his parents and financial support from the parents.

**[19]** Paternity on the other hand, refers to the legal recognition of a man as the father of a child. Paternity can be established through various means, such as marriage, DNA testing or acknowledgement by the father. In other words, legitimacy is a legal status of a child born to married parents, while paternity is the legal recognition of a man as a father.

**[20]** This opinion is drawn from the decision of the COA in the case of *CAS v MPPL & Anor* [2019] 4 MLJ 243 where Nalini Pathmanathan COAJ (as she then was) expounded as follows:

> [24] We were of the view that the concepts of 'paternity' and 'legitimacy' should necessarily be separated. The former concerns a question of fact; the latter a question of law. Section 112 of the Evidence Act 1872 constitutes adjectival law, and it is trite that adjectival law must be interpreted liberally so as not to defeat the rights of parties. This is all the more so when it comes to s 112 of the Evidence Act 1872 which dates back to 1872. It is an outdated and anachronistic legal provision that ought to be construed and given effect in line with modern day scientific advancements.
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> [25] We find strong support for our above view in the decision of the Indian Supreme Court in *The State of Punjab v Shamlal Murari & Anor* [1976] 1 SCC 719, at para 8 which held:
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> > We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice.

**[21]** The decision of the COA was referred with affirmation by Tengku Maimun Chief Justice in her dissenting judgment in the Federal Court case of *CTEB & Anor v Ketua Pengarah Pendaftaran Negara Malaysia & Ors* [2021] 4 MLJ 236 as follows:

> [169] Legal differences aside, CAS establishes the principle that with the advent of virtually perfectly accurate DNA tests in this modern age, paternity and legitimacy are two distinct concepts. Paternity is an issue of fact while legitimacy is a construct of the law.

**[22]** On the premise of these decisions, the issue of paternity is an issue of facts which is different from legitimacy. In this court's considered view, it is not within the exclusive jurisdiction of the Syariah Court. The applicants has all rights to file this application in this court and this court has all the jurisdiction to adjudicate the matter.

**[23]** The next issue raised by the counsel of the respondent is in regard to O 5 r 3 of the Rules of Court 2012 as it was contended that this matter should not be begun by originating summons since there is likely to be substantial dispute of facts. The stands taken was due to the objection by the respondent to exh CR3 and witness should be called and examined in order for this court to admit it as evidence (refer: *Shyamala a/p M Shanmuganathan lwn Ko Boon Leong dan satu lagi* [2022] MLJU 714; [2022] 1 LNS 350).

**[24]** Upon perusing the respondent's affidavit at encl 7, this court finds that the only contest of the respondent to exh CR3 is to the legality of the sample taken. This is what the respondent affirmed:

> Tindakan plaintif-plaintif memfailkan tindakan terhadap responden adalah tidak sesuai berdasarkan fakta kes ini di mana plaintif-plaintif sepatutnya memulakan tindakan secara writ saman di mana laporan yang diekshibitkan sebagai eksh CR3 adalah laporan yang penting di mana defendan perlu diberi peluang untuk menyoal pihak-pihak yang terlibat penyediaan laporan tersebut di dalam satu perbicaraan penuh bagi menentusahkan laporan tersebut.

**[25]** It has been a principle of law that in considering whether evidence is admissible is whether it is relevant to the matters in issue and the court is not concerned with how the evidence was obtained (refer: *Kuruma, Son of Kaniu v R* [1955] AC 197; *Regina v Sang* [1980] AC 402).

**[26]** There is no serious attack on the DNA report specifically to the expertise of expert witnesses and the techniques carried out by said experts. In other words, there is no serious dispute to the facts.

**[27]** In the case of*CAS v MPPL & Anor* [2019] 4 MLJ 243, the COA in making an order for the trial to be remitted back to the High Court held that:

> [40] It is trite that when there is a substantial dispute as to fact in any proceedings, such proceedings shall be begun by writ. If at all authority is needed, see: O 5 rr 2 and 4 of the Rules of Court 2012. In our reading of the affidavits in this action, it is as plain as pikestaff that the defendants deny many of the allegations made by the plaintiff in respect of his purported relationship with the first defendant and Child C. These are crucial matters. The plaintiff's claim ought not to have been dismissed outright in the absence of judicial determination on these crucial issues. Such determination can only be made with full viva voce evidence.

A [41] In this vein, we ordered that encl 5 be remitted to the High Court and be converted into a writ action. We did so in accordance with O 1A, O 2 r 1, O 28 r 8 and O 92 r 4 of the Rules of Court 2012. In this way, parties may fully ventilate all issues. If at all precedent is needed, we refer to the decision of the Court of Appeal in Lee Lai Cheng No. 2 (supra at para 62) where this court remitted the O 14A B application to the High Court for trial. This stood independently from the point as to whether our courts are empowered to order DNA tests under their inherent jurisdiction.

**[28]** This court however finds that there is no similarity in fact between this C case and in *CAS v MPPL & Anor* [2019] 4 MLJ 243. In this case, the respondent failed to seriously contest or deny the DNA report adduced by the applicants. There are no reasons why this court should convert this action to a writ action.

D *Issue (b): Whether it is proved that respondent is the biological father to the first applicant*

**[29]** It is beyond doubt that in this case, both the first applicant and the E respondent have their blood been taken and subjected to the DNA test. The second applicant in her affidavit alleged that the respondent voluntarily and without any force allowed his blood to be taken as sample and be tested. Although the respondent in his affidavit denied the second applicant's contention, nevertheless it was further explained by the second applicant in her F affidavit at encl 8.

**[30]** Be as it may, this court finds no logic in the reply by the respondent. As an adult person and who has the legal capacity, the respondent has all the opportunity to reject any application for his blood to be taken and tested. G There is no evidence of any force used and once he has given his consent, he is deemed to accept any opinion given by the expert unless if he can show to this court any legal and evidential error.

H **[31]** Upon this finding, the next issue is the effect of the DNA report to all parties. On this, the learned counsel of the applicant refers this court to the decision of the Federal Court in the case of *Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor* [2022] 1 MLJ 398. The single question before the court was whether the I National Registration Department is under a statutory duty to record the particulars of the natural father of an illegitimate child and/or to correct/amend/update such records, when evidence and undisputed facts of DNA result are available.

**[32]** The Federal Court admitted the report prepared by the chemistry department which carried out the DNA test which revealed that the appellant is the biological father of the child. The facts were undisputed as explained in the affidavit and based on these facts, the Federal Could allowed the appeal and held that the Registrar-General cannot refuse the new information and ought to have facilitated the correction or alteration of the birth records.

**[33]** In other words, the Federal Court accepted the DNA test as determination of the biological father or the paternity of a child.

**[34]** On this premise, this court is of the considered view that a similar approach shall withstand. Exhibit CR3 shall be a conclusive proof of the paternity of the respondent on the first applicant.

CONCLUSION

**[35]** This court is in the opinion that the first applicant shall not be denied his right to know who is his biological father. The spur of the intimacy moment between the second applicant and the respondent shall not hinder the first applicant's right. This action might be seen as not ordinary in lights of the religious and cultural background of all parties. More so, the first applicant may have no benefit in terms of financial or inheritance from the respondent, but the secret of whom is his biological father shall not be kept forever.

**[36]** In the upshot, based on the aforesaid reasons, and after careful scrutiny and judicious consideration of all the evidence before this court, encl 1 is allowed with no order as to cost.

*Enclosure 1 allowed with no order as to cost.*

Reported by Nabilah Syahida Abdullah Salleh